

E-Filed 03/17/08

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HUHTAMAKI FINANCE, B.V., a Netherlands corporation;
HERSHEY CHOCOLATE &
CONFECTIONARY, a Delaware corporation; and
THE HERSHEY COMPANY, a Delaware corporation,

Plaintiffs,

v.

KENNETH DEAN AFFOLTER, an individual,
d/b/a BEYOND BOMB,

Defendant.

Case Number C 07-02514 JF (RS)

ORDER¹ DEFERRING DECISION ON
MOTION FOR ENTRY OF DEFAULT
JUDGMENT AND SETTING
BRIEFING SCHEDULE FOR
MOTION TO SET ASIDE DEFAULT
AND MOTION TO DISMISS

Plaintiffs Huhtamaki Finance, B.V., a Netherlands corporation; Hershey Chocolate & Confectionary, a Delaware corporation; and The Hershey Company, a Delaware corporation (collectively, "Plaintiffs"), move for entry of default judgment against Defendant Kenneth Dean Affolter, an individual doing business as "Beyond Bomb" ("Defendant"). Plaintiffs filed the

¹ This disposition is not designated for publication and may not be cited.

1 complaint in this action on May 10, 2007, alleging trademark infringement arising out of
2 Defendant's use of the names "Stoney Ranchers" and "Rasta Reese's" in a style and manner
3 confusingly similar to Plaintiffs' "Jolly Ranchers" and "Reese's" trademarks. Defendant was
4 served on May 18, 2007. The clerk entered default against Defendant on July 5, 2007. On
5 January 11, 2008, Plaintiffs moved for entry of default judgment and mailed a copy of their
6 motion to Defendant. Plaintiffs are seeking \$200,000 for Defendant's infringement of each
7 trademark. Plaintiffs' motion for default judgment is supported by the declarations of Lois
8 Duquette, senior counsel of Plaintiff The Hershey Company, and Plaintiff's litigation counsel.

9 On February 11, 2008, Defendant filed a letter in opposition to the motion, alleging that
10 Plaintiffs' claims lack specificity. In keeping with the liberal pleading standards for litigants
11 acting without the assistance of counsel, Defendant's letter will be treated as a motion to set
12 aside the default judgment and as a motion to dismiss. *See, e.g., Becker v. Montgomery*, 28
13 U.S.C. 2107 (2001); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Agyeman v. INS*, 296 F.3d 871,
14 878 (9th Cir. 2002). Defendant seeks a continuance of the present action until he is released
15 from federal prison. Defendant's earliest release date is April 17, 2011.

16 Good cause therefore appearing, the Court will defer ruling on Plaintiffs' motion for entry
17 of default judgment. Defendant shall have thirty (30) days to file an appropriate motion to set
18 aside the default and a motion to dismiss Plaintiffs' complaint. Plaintiffs shall have thirty (30)
19 days from the filing date of Defendant's motions to file opposition to the motions, and Defendant
20 shall have thirty (30) days from the filing of Plaintiffs' opposition to file a reply. In light of
21 Defendant's incarceration, the Court will take the motions under submission and issue orders
22 without oral argument pursuant to Civil Local Rule 7-1(b).

23
24 IT IS SO ORDERED.

25 DATED: 03/17/08

26
27 
28 JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:
2 vito.costanzo@hklaw.com

3
4 Notice will be delivered by other means to:

5 **Kenneth Dean Affolter**
6 93480-111
7 FCI Lompoc
8 3600 Guard Road
9 Lompoc, CA 93436-2705
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